

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA ex rel.  
JOSEPH SEIKEL and TERENCE SEIKEL,

Plaintiffs/Relators,

v.

Case No.: 1:23-cv-00001-TSK  
Judge: Thomas S. Kleeh

DAVID B. ALVAREZ; APPLIED  
CONSTRUCTION SOLUTIONS, INC.;  
ENERGY TRANSPORTATION, LLC;  
ENERGY RESOURCE GROUP, LLC;  
ET360, LLC; BEAR CONTRACTING, LLC;  
BEAR UTILITIES, LLC; JASON P.  
HENDERSON; and JOHN DOES NOS. 1-50,  
FICTITIOUS NAMES;

Defendants.

**ALVAREZ DEFENDANTS' MOTION TO DISMISS**

Defendants David B. Alvarez; Applied Construction Solutions, Inc.; and Energy Transportation, LLC (collectively “Alvarez Defendants”); by and through undersigned counsel, hereby move to dismiss Relators Joseph Seikel and Terence Seikel’s (collectively “Relators”) Complaint because Relators are not qualified to bring a False Claims Act (FCA) action in the first place, therefore demanding dismissal under the FCA, or alternatively, even if this Court were to permit Relators to continue bringing this case, for failure to state a claim for which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

For the reasons set forth in the accompanying Memorandum of Law in support of their Motion to Dismiss, Relators’ claims against Defendants must be dismissed because they are not qualified to bring this action, and so this Court—along with every other federal court—must dismiss the action pursuant to the FCA. In the alternative, Relators’ Complaint should be dismissed for failure to plead violations of the FCA with the requisite particularity for lawsuits alleging fraud,

thus failing to state a claim for which relief may be granted pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6). Even if the Complaint met Rule 9(b)'s particularity requirements, Relators' claims fail under 12(b)(6) because they have not sufficiently plead all the essential elements of a FCA claim.

Relators' lack of reliability and misleading allegations of having "insider knowledge" make them unqualified to serve as relators. Even if given the benefit of the doubt, Relators fail to adequately plead with particularity that the Alvarez Defendants are "co-conspirators" in the alleged scheme to defraud the United States government. If these entities are not affiliated, then Relators' claims must all fail, for no violation of the FCA has occurred.

Wherefore, the Alvarez Defendants respectfully request that this Court grant this Motion and dismiss the Complaint with prejudice.

Date: February 28, 2023

DAVID B. ALVAREZ; APPLIED  
CONSTRUCTION SOLUTIONS, INC.; AND  
ENERGY TRANSPORTATION, LLC

By Counsel

/s/ Marc R. Weintraub

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of February, 2023, the foregoing was electronically filed and served through the Court's CM/ECF system to counsel of record.

/s/ Marc R. Weintraub

Marc R. Weintraub (WVSB # 8055)